

(2017) 01 PAT CK 0079

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7068 of 2014

Dr. Kamal Prasad Sah

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 14(10)
Constitution of India, 1950 — Article 226

Citation : (2017) 1 PLJR 967

Hon'ble Judges : Mr. Ahsanuddin Amanullan, J.

Bench : Single Bench

Advocate : Mr. Chitranjan Sinha, Sr. Advocate and Mr. Sanjay Kumar Ghosarvey, Advocate, for the Petitioners; Mr. Yogendra Mishra and Mr. Arvind Kumar, Advocates, for the Respondents; Mr. Sheo Shankar Prasad, S.C. 8 and Mr. Sanjay Kumar, A.C. to S.C. 8, for the State; Mr. Sanjay Kumar, Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullan, J. (Oral) - Heard Mr. Chitranjan Sinha, learned senior counsel assisted by Mr. Sanjay Kumar Ghosarvey, learned counsel for the petitioner, Mr. Yogendra Mishra, learned counsel assisted by Mr. Arvind Kumar, learned counsel for the Bihar State Handloom Weavers Co-operative Union (hereinafter referred to as the "Union") and Mr. Sheo Shankar Prasad, learned counsel assisted by Mr. Sanjay Kumar, learned counsel for the State.

2. The challenge in the present writ application is to the Letter No. 205 dated 26.12.2013 of the respondent no. 3 as well as Letter No. 18 dated 30.01.2014 of the Managing Director, by which the agreement in favour of the petitioner has been cancelled and he has been directed to vacate the premises leased to him.

3. Learned counsel for the petitioner submitted that the lease deed was executed with him initially in the year 2008 and then in the year 2012, it was renewed for the next five years. It was submitted that once there is a registered lease deed,

the only mode of eviction is through the due procedure in law by moving before the civil Court of competent jurisdiction. Learned counsel submitted that the respondents without doing so cannot short-circuit the system and get the petitioner evicted from the premises which is under his possession under a valid registered lease deed agreement. Learned counsel further submitted that the terms and conditions of the renewed lease deed dated 21.12.2012, especially Clause-13, clearly stipulates that the State Union shall not put any hindrance in occupation of tenant or any person claiming under him and he shall continue to enjoy the rent hold property quietly and peacefully till the existence of the Rent Agreement. Learned counsel submitted that once the respondents have executed the said lease agreement, the terms and conditions are binding on both the parties and cannot be given a go-by and straightway eviction cannot be effected. Learned counsel further submitted that even the initial decision of the Managing Director-cum-Administrator of the respondent Co-operative Society dated 26.12.2013 has been passed under the direction of the Principal Secretary, Industries Department which is impermissible, since the decision has not been taken independently by the Union. Finally, learned counsel summed up his argument by reiterating that the summary direction by the respondents to the petitioner to vacate the premises in question cannot be sustained, without them having taken recourse to the procedure established in law.

4. Learned counsel for the respondents submitted that the writ petition itself is not maintainable for the reason that the Full Bench of this Court in the in the case of The Organizer, Dehri C.D. & C.M. Union Ltd. v. State of Bihar reported as 2014 (1) PLJR 695, has held that the Co-operative Society is not amenable to the writ jurisdiction and in the present case, the initial order dated 26.12.2013, though passed by the Managing Director in the capacity of the Administrator, but upon notice to the petitioner, him having filed objection, the matter was considered by the duly constituted Managing Committee of the Union and the decision taken on 18.01.2014, not to interfere in the same has now become the order of the Union and, thus, the writ petition would not lie. Learned counsel further submitted that even otherwise on merits, the appointment of the Administrator was lastly extended by order dated 25.05.2012 for a period of six months or till the election of the Union, whichever is earlier, which is as per the statutory period mentioned in Section 14(10) of the Bihar State Co-operative Society Act, 1935. It was submitted that six months expired on 24.11.2012, whereas the agreement was executed between the parties i.e., the Managing Director on the one side and the petitioner on the other side on 21.12.2012, by which date, the Administrator had ceased to function as such. It was submitted that though the execution is dated 21.12.2013, the agreement mentions that it would be with effect from 30.11.2012 i.e., when the Administrator was holding office. Learned counsel submitted that the whole episode is a classic example of State and private collusion. It was submitted that despite there being various circumstances of undue advantage being derived by the petitioner, the matter was kept hanging and now it has reached this stage. In support of his

contention, learned counsel refers to various paragraphs of his counter affidavit, the relevant being quoted hereinbelow :

"8. That so far as the alleged agreement (annexure-2 of the writ petition) is concerned the document is void ab initio which will appear from the facts stated below :

I. In the year 2008 an attempt was made to make settlement of vacant land owned and possessed by the aforesaid union.

II. As soon as it came to light that steps have been taken for settlement of the aforesaid vacant land on lease basis, the action was stayed by the State Government which is the real owner of the land leased out of the aforesaid union and the then Managing Director by the letter dated 31.12.2008 informed the present petitioner not to make any construction till the inquiry is completed otherwise the allotment would be cancelled.

A copy of the letter dated 31.12.2008 is herewith annexed marked as annexure "E" .

III. The matter of settlement of the land had come on the floor of Bihar Legislative Council and as per decision of the council the Deputy Secretary by the letter dated 04.02.2009 directed the Principal Secretary, Industries Department to submit a report regarding the implementation of the stay order and also submit certain papers mentioned therein.

A copy of the letter dated 04.02.2009 is herewith annexed marked as annexure-"F".

IV. Thereafter the then Managing Director by the letter dated 14.02.2009 directed the petitioner to stop any construction over the land.

A copy of the letter dated 14.02.2009 is herewith annexed marked as annexure-"G".

V. In spite of the restraint order the petitioner proceeded to make construction and therefore the then Managing Director by the letter dated 11.04.2009 informed the petitioner to immediately stop and further action failing which the allotment would be cancelled.

A copy of the letter dated 11.04.2009 is marked as annexure-"H".

VI. It appears that the then Managing Director had sent half-hearted report to the Directorate of Industries without disclosing the real state of affairs and therefore the Additional Director of Industries by the letter dated 02.09.2009 again directed to submit a clear cut report on the point whether the order of stay of construction has been implemented or not.

A copy of the letter dated 02.09.2009 is marked as annexure "I".

VII. The stay order remained operative and so the then Managing Director

(respondent no. 3) sought guideline for grant of any further lease which is evident from the letter dated 30.04.2011.

A copy of the letter dated 30.04.2011 is marked as annexure "J".

VIII. It further appears that neither any permission to grant ant lease for further period was given nor the stay was ever vacated.

IX. In spite of continuance of the stay the then Managing Director executed lease deed in favour of the petitioner with oblique motive putting the union to heavy loss.

9. In the meantime, the managing committee of the union stood dissolved because of non-holding of election in time and the then Managing Director was authorised to act as administrator too. The stay and inquiry with respect to the settlement continued but still the outgoing Managing Director Shri Ashok Kumar Singh without any permission from the Government and without any authority of law executed the lease agreement as contained in annexure-1 which is void ab initio and not binding upon this union (intervener-respondent).

10. That as regards the power of Managing Director, it is prescribed under the provisions of section 14 under which he had absolutely no jurisdiction to execute a lease deed for 5 years and especially during continuance of stay and restriction over any construction.

11. That as regards administrator, it is stated that he was required to perform routine duties only and not to take any major decision as held by Hon''ble Supreme Court.

12. That the writ petitioner had made an application for continuance of the lease for full term.

A copy of the application dated 06.01.204 is marked as annexure "K".

13. That in the year 2014, the regular managing committee was constituted and the Board of Directors held a meeting on 18.01.2014 and resolved to get the land vacated after rejecting the application of the petitioner.

A copy of the minutes of the proceeding dated 18.01.2014 is annexed and marked as annexure-L.

14. That in the teeth of the aforesaid resolution of the managing committee (annexure-1) the then Managing Director issued letter dated 30.01.2014 (annexure-7 to the writ petition) directing the petitioner to vacate the land in questions in order to enable the aforesaid union to take possession.

15. That since the present petitioner did not vacate the land, the answering respondent sent legal notice dated 24.03.2014 in terms of Section 106 of the Transfer of Property Act.

A copy of the legal notice dated 24.03.2014 is annexed and marked as annexure

"M".

16. That as stated above the lease agreement (annexure-2 to the writ petition) is void and the union has the right to ignore it and take possession of the land in question for its personal necessity that is in the interest of lacs of Weavers? for whom construction of that has been sanctioned by the State Government with its own financial aid as is evident from Annexure-"2" to the writ petition.

17. That it is settled principle of law that an individual interest will be ignored for the benefit of public at large and so the claim of the petitioner is not at all justiciable under Article 226 of the Constitution of India and in this view of the matter the present writ is wholly misconceived and not maintainable which deserves to be dismissed."

5. Learned counsel submitted that even otherwise in law, when an Administrator is appointed, he can only perform day to day routine matters with regard to the Union, but cannot take major decisions, and entering into an agreement of lease, and that too, for a period of five years, is a major decision which has the effect of binding the Union to its disadvantage, which could not have been taken by the Administrator. For such proposition, he relied upon the decision of the Hon'ble Supreme Court in the cases of K. Shantharaj v. M.L. Nagaraja reported as AIR 1997 SC 2925; JT. Registrar of Cooperative Societies v. T.A. Kuttappan reported as (2000) 6 SCC 127 and Zoroastrian Co-op. Hsg. Socy. Ltd. v. Dist. Registrar, Co-op. Societies (Urban) reported as AIR 2005 SC 2306.

6. Learned counsel submitted that even earlier in 2008 when steps taken for settlement of the land came to the notice of the State Government, which is the owner of the land in question, there was an interim order of stay and without grant of permission for lease for further period or vacation of stay, the then Administrator at the fag end and in fact, even when his time had expired, entered into an agreement with the petitioner which clearly indicates extraneous consideration and mala fide. He further submitted that the wrong act of an individual shall not bind the State and moreover, in the present case, when the land is required for the welfare of the members of the Union itself, the right of a private individual i.e., the petitioner, cannot be given priority since the land is for the Union and in any case belongs to the State Government.

7. Having considered the rival contentions, this Court is of the opinion that the order, as of now, by which the petitioner can be said to be aggrieved, is only that of the elected Union, which is not amenable to writ jurisdiction under Article 226 of the Constitution of India in view of the law settled by the Full Bench of this Court in the case of The Organizer, Dehri C.D. & C.M. Union Ltd. (supra). Moreover, as the facts and circumstances of this case strongly indicate of there being undue advantage derived by the petitioner in collusion with the particular Administrator, the Court would otherwise also refrain from interfering in the matter in its prerogative and extraordinary writ jurisdiction.

8. Thus, taking an overall view of the matter, the Court does not find any reason

to interfere, both on the ground of maintainability of the writ petition as well of there being alternative remedy. The Court would also like to observe that since the court has been persuaded not to interfere, basically on the ground of maintainability, the observations made in this order are for the purposes of deciding the present writ application and shall not cause prejudice to either of the parties in any other proceeding(s).